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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/402,796	12/22/1999	CHRISTINE DUPUIS	05725.0481	6460
7590	11/20/2003		EXAMINER	
FINNEGAN HENDERSON FARABOW GARRETT & DUNNER 1300 I STREET NW WASHINGTON, DC 20005			WELLS, LAUREN Q	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 11/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/402,796	DUPUIS, CHRISTINE
	Examiner Lauren Q Wells	Art Unit 1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 15 October 2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 16-37 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 16-37 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \*    c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.      6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

Claims 16-37 are pending. The Amendment filed 10/15/03, amended claim 21.

### ***Response to Applicant's Arguments/Amendment***

The Applicant's arguments filed 10/15/03 to the rejection of claims 16-37 made by the Examiner under 35 USC 103 and 112 have been fully considered and deemed not persuasive.

### ***112 Rejection Maintained***

The rejection of claim 21 under 35 U.S.C. 112 is MAINTAINED for the reasons set forth in the Office Action mailed 5/20/03, and those found below.

Applicant argues, "The Examiner erroneously equates breadth with indefiniteness". This argument is not persuasive. As previously stated, this claim is vague and indefinite, as its metes and bounds are unascertainable, as it is unknown what chemical, enzymatic or microbiologic modifications are, and what such a starch end product is.

Applicant argues, "the specification makes clear that the phrase means a starch, e.g., a starch extracted from natural sources, 'which as been chemically, enzymatically, or microbiologically modified so as to be soluble in water'". This argument is not persuasive, as this does not define the instant phrase.

Applicant argues, "the specification provides examples of starches that may be used, e.g., 'wheat starch, corn starch, rice starch, potato starch'". This argument is not persuasive, as it still does not define the phrase, but recites the starting starch, which is not the starch being claimed in instant claim 18.

Applicant's amendment to the claim is still vague and indefinite, as it merely moves around the words in the claim.

***103 Rejection Maintained***

The rejection of claims 16-23, 25-37 under 35 U.S.C. 103(a) as being unpatentable over Dupuis et al. (6,080,392) in view of Emmons et al. (4,155,892) and in view of Huglin et al. (6,284,821) is MAINTAINED for the reasons set forth in the Office Action mailed 5/20/03, and those found below.

Applicant argues, “The Examiner has offered no reason or proof that one of ordinary skill in the art would be motivated to combine Dupuis I and Emmons. The Examiner contends that ‘the polyurethane thickeners [in Emmons] are disclosed for use in cosmetic compositions” but offers no support, in Emmons or elsewhere, for this contention. In reality, the disclosure of Emmons teaches the use of the thickeners almost entirely in latex paint compositions. The ‘suggestion’ for use of the thickeners in ‘cosmetics and toiletries’ relied on by the Examiner is sandwiched between a long list”. This argument is not persuasive. First, this argument is confusing. Applicant contends that there is no support for the thickener of Emmons in cosmetics and then Applicant recites a portion of Emmons which specifically states “cosmetics and toiletries”. The Examiner respectfully points out that a teaching is a teaching. It is well-established that consideration of a reference is not limited to the preferred embodiments or working examples, but extends to the entire disclosure for what it fairly teaches, when viewed in light of the admitted knowledge in the art, to person of ordinary skill in the art. In re Boe, 355 F.2d 961, 148 USPQ 507, 510 (CCPA 1966); In re Lamberti, 545 F.2d 747, 750, 192 USPQ 279, 280 (CCPA 1976); In re Fracalossi, 681 F.2d 792, 794, 215 USPQ 569, 570 (CCPA 1982); In re Kaslow, 707 F.2d 1366, 1374, 217 USPQ 1089, 1095 (Fed. Cir. 1983). Furthermore, the

Examiner respectfully points out that Emmons exemplifies cosmetic compositions comprising polyurethane thickeners. Thus, it is unclear why Applicant is making such an argument.

Applicant argues, "Applicant has thoroughly searched the reference for the teaching of end-capping carbon chains with 4 to 20 carbon atoms, as identified by the Examiner, but has been unable to find it". This argument is not persuasive. The Examiner respectfully directs Applicant to Examples 97-102 in Cols. 21 and 22, which exemplify end-capping groups ranging from C4-C18.

Applicant argues, "While Emmons appears to disclose that its thickeners may form a "ringing" gel, it provides no motivation to change the composition of Dupuis I from the form of a mousse into the form of a gel". This argument is not persuasive, as Emmons was not relied upon to teach gel forms. It is respectfully pointed out that Huglin is relied upon to teach the interchangeability of mousses and gels in cosmetic formulations.

Applicant argues, "Applicant respectfully traverses. Huglin does not teach a hair composition that can be both in the form of a mousse or a gel. Rather, Huglin teaches a particular type of "stabilizer" compound, which can be used in various cosmetic forms. The compound taught in Huglin in no way resembles formula (1) of the present invention". This argument is not persuasive. First, the Examiner respectfully points out that Huglin is not relied upon to teach similar compounds to those taught by Dupuis et al. Huglin is relied upon as a general cosmetic reference that teaches that it is known and conventional to interchange gel and mousse formulations in cosmetic formulations. Second, in Col. 32, Huglin teaches that it is conventional in the art to formulate cosmetic hair compositions for styling in the form of mousses or gels. Thus, Huglin does teach hair compositions that can be both in the form of a mousse or a gel.

The rejection of claim 24 under 35 U.S.C. 103(a) as being unpatentable over Dupuis et al. (6,080,392) in view of Emmons et al. (4,155,892) and in view of Hugel et al. (6,284,821), as applied to claims 16-23, 25-37, above, and further in view of Prencipe et al. (5,358,729) is MAINTAINED for the reasons set forth in the Office Action mailed 5/20/03, and those found below.

Applicant argues, “First, there is no motivation to use any teaching from Prencipe, which teaches linearly viscoelastic cross-linked thickening agents, to arrive at the present invention, which is based on associative polyurethane thickening agents”. This argument is not persuasive. It is respectfully pointed out that Dupuis teaches phosphonic acids as anionic polymers in his invention and that Prencipe is merely relied upon to teach specific phosphonic acids that are utilized in hair care formulations. Additionally, it is respectfully pointed out that Prencipe and Dupuis are both directed to hair styling formulations. Thus, one of skill in the art would be motivated to teach the phosphonic acids of Dupuis as the specific phosphonic acids taught by Prencipe because of the expectation of achieving additional thickening properties and viscoelasticity of the hair care product.

Applicant argues, “The fact that Prencipe may teach a composition in gel form is not enough motivation for one to seek out, let alone apply its teachings, when the chemistry of the composition is different from that of the claimed invention”. This argument is not persuasive. The Examiner respectfully points out that the Examiner has not even relied upon the gel form of Prencipe as motivation to combine the references.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

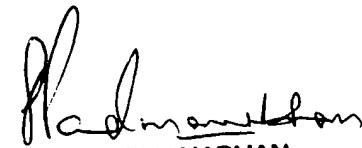
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-4:30), with alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (703)305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw

  
SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER

11/10/03